

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act)	CC Docket No. 92-90
Of 1991)	

REPLY COMMENTS OF CABLEVISION SYSTEMS CORPORATION

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January 31, 2003

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Cablevision Systems Corporation submits these reply comments in response to the FCC’s Notice of Proposed Rulemaking issued last September asking whether it should modify its rules implementing the Telephone Consumer Protection Act of 1991 (“TCPA”) and, in particular, to adopt a national “do-not-call” registry and prohibit companies from telemarketing to those citizens who choose to send their names and numbers to this nationwide database.^{1/}

Cablevision strongly supports efforts by the FCC to protect the privacy of consumers, including its customers. Cablevision believes, however, that any changes to the FCC’s TCPA rules should not interfere with Cablevision’s ability to maintain and expand its existing and ongoing relationships with its customers through use of the telephone.^{2/}

^{1/} Notice of Proposed Rulemaking and Memorandum Opinion and Order, 17 FCC Rcd 17459 (September 18, 2002) (“Notice”).

^{2/} Cablevision’s reply comments are filed to provide supporting facts for and expand upon the comments filed for the cable industry generally by NCTA in the initial round of comments in this proceeding. See Comments of National Cable and Telecommunications Association, December 9, 2002.

I. THE FCC SHOULD CONTINUE A BROAD INTERPRETATION OF THE “ESTABLISHED BUSINESS RELATIONSHIP” EXCEPTION IN CONNECTION WITH ESTABLISHING A NATIONAL DO-NOT-CALL LIST

Cablevision, a leading telecommunications and entertainment company, provides cable television service, telephony, cable modem service, and other innovative product and service offerings to customers located principally in New York, New Jersey and Connecticut.

Cablevision has invested billions of dollars to upgrade its network in order to provide its customers with the next generation of advanced digital communications services, including video applications such as interactive television, original interactive content like its groundbreaking Mag Rack, and high definition television. Cablevision also offers the only A+ customer rated high speed Internet access service in the country, Optimum Online, and has recently launched an IP telephony service, Optimum Voice. Telemarketing is a very useful and efficient means of informing Cablevision’s customers of the availability of new product and service offerings as well as special promotional opportunities.

The FCC should maintain a broad exemption for calls to persons “with whom the caller has an established business relationship,” from the definition of “telephone solicitations” in connection with establishing a do-not-call list, as it has under its existing rules.^{3/} The Commission has concluded that solicitation of someone in that category does not adversely affect their privacy interests.^{4/}

^{3/} 47 C.F.R. §64.1200(c)(3).

^{4/} See Notice at ¶34.

Cable companies like Cablevision may have an “established business relationship” with a customer for one of its lines of service who is not yet a customer for its other products or services. Cablevision and other cable operators facing strong competition from other providers of video programming and voice and data services need to let their customers know that they offer bundles or packages of these services at discounted prices.

In addition to its television and telecommunications products and services, Cablevision owns and operates an array of entertainment and retail venues throughout the New York, New Jersey and Connecticut region. Cablevision may wish to call a subscriber to one of its services to offer special promotions for sports or other events at Madison Square Garden, or Radio City Music Hall or discounts at its electronic retail outlets and movie theaters. If the FCC decides to adopt a national do-not-call list, it should make clear that the placement of a Cablevision customer’s name on such a list does not preclude Cablevision from calling that customer and offering promotions or packages that consist of or include tickets or discounts at one of those establishments.

Not only did Congress specifically state that telephone solicitations restricted by an FCC established national do-not-call list should not include calls or messages to “any person with whom the caller has an established business relationship.”^{5/} But the Commission’s own rules define “established business relationship” to mean:

a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the residential subscriber regarding products or services offered by such person or

^{5/} 47 U.S.C. §227(a)(3).

entity, which relationship has not been previously terminated by either party.^{6/}

II. THE FCC SHOULD INCLUDE IN THIS EXEMPTION CALLS TO FORMER CUSTOMERS FOR A REASONABLE PERIOD OF TIME

Not only should the FCC retain this broad definition, but it should also clarify that cable operators and other telecommunications providers may call a prior customer appearing on the do-not-call list for a reasonable period of time following the loss of the customer. This should be considered part of an “established business relationship” even though the prior relationship may have in a literal sense, at least temporarily, been “terminated.”

There is an important competitive benefit to be gained by allowing such so-called “win-back” programs launched not only by cable operators, but also by DBS and other competing providers of video, voice and Internet services. During these periods, the consumer obtains the benefit of having offers of several choices of bundles or packages of services and/or enjoyment at reduced rates. Such promotional sales efforts are common in many businesses, including those areas within the FCC’s direct jurisdiction, such as video and telecommunications services, and this would also be consistent with Congressional intent.^{7/}

CONCLUSION

Thus, if the FCC determines to adopt a national do-not-call list, it should insure that it includes an exemption for calls to existing customers not only for offerings to

^{6/} 47 C.F.R. §64.1200(f)(4).

^{7/} The Notice cites legislative history to the effect that such a relationship “could be based upon any prior transaction, negotiation or inquiry between the called party and the business entity that has occurred during a reasonable period of time.” Notice at fn 133.

enhance the customer's experience of the particular services now purchased from the caller, but also for the other services that the caller offers, so long as the caller has first created an "established business relationship" with the customer. The FCC should also adopt a broad definition of customers having an "established business relationship" to include customers who have recently terminated a particular type of service, so that the caller can attempt within a reasonable period of time to "win back" the customer.

Such an approach will benefit not just cable companies like Cablevision with multiple media and telecommunications product lines, but also Cablevision's many competitors offering multiple products, from telephone to DBS companies, that would have equal flexibility to compete by telephone solicitation with their customers to further the broadband expansion that both Congress and the Executive Branch have promoted as beneficial for the nation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Frank W. Lloyd, do hereby certify that on this 31st day of January, 2003, copies of the foregoing Reply Comments of Cablevision Systems Corporation were served on the following persons in the indicated manner:

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